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DEC 10 PAGE 4

CASE NO. 82-754

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STATE OF FLORIDA,

Petitioner,

vs.

DANIEL LOWELL COLER,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. DOUGLAS BRINKMEYER
ASSISTANT PUBLIC DEFENDER

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ATTORNEYS FOR RESPONDENT

CASE NO. 82-754

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STATE OF FLORIDA,

Petitioner,

vs.

DANIEL LOWELL COLER,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

QUESTION PRESENTED

Whether the imposition of the death penalty upon a person of 18 years or older for the sexual battery of a child of 11 years or younger is disproportionate to the crime in violation of the Eighth and Fourteenth Amendments to the United States Constitution?

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ADDITIONAL REASONS FOR DENYING THE WRIT

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PETITIONER HAS ENTERED A NOTICE OF NOLLE PROSEQUI IN THE STATE TRIAL COURT.

Respondent files this supplemental brief pursuant to Rule 22.6 to inform the Court of an intervening matter not available at the time respondent's brief in opposition was filed.

On November 19, 1982, petitioner entered a notice of nolle prosequi in the state trial court. Under Florida law, this means that petitioner has announced its intention not to prosecute respondent for the charges which are the subject of this petition for writ of certiorari. Wilson v. Renfroe, 91 So.2d 857 (Fla. 1956). See the appendix attached to this brief. Although petitioner is not precluded from re-prosecuting respondent, he has been released from custody and it appears unlikely that he will be retried.

Accordingly, the undersigned contacted counsel for petitioner and suggested that this cause be appropriately dismissed pursuant to Rule 53. Counsel for petitioner declined to do so. However, it appears to the undersigned that no more of this Court's overburdened resources should be expended on what has become a frivolous petition for writ of certiorari with no case or controversy. Bucolo v. Adkins, 424 U.S. 641, 644 (1976) (Justices Stevens and Rehnquist, dissenting).

CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, as well as that contained in the brief in opposition, respondent requests that this Court deny the petition as legally frivolous.

Respectfully submitted,

P. DOUGLAS BRINKMEYER
Assistant Public Defender
Second Judicial Circuit
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

Attorney for Respondent

IN THE CIRCUIT COURT OF DUVAL COUNTY, FLORIDA

CASE NO. _____ DIVISION _____

OFFENDER NO. _____

STATE OF FLORIDA

VS:

_____

_____

INFORMATION FOR _____

_____

_____

_____

THIS IS TO CERTIFY THAT _____

_____

_____

_____

WITNESS my hand and seal of office at Jacksonville, Florida, this

DATE _____

S. MORGAN SLAUGHTER, CLERK

By: Valerie Kovar
Deputy Clerk

CR-M 4-76 FS-604

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondent's Supplemental Brief In Opposition to Petition for Writ of Certiorari to the Supreme Court of Florida has been hand delivered to Mr. Gregory C. Smith, Assistant Attorney General, The Capitol, Tallahassee, Florida, this 1st day of December, 1982. I further certify that all parties necessary to be served have been served.

P. Douglas Brinkmeyer

P. DOUGLAS BRINKMEYER